IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
APPELLATE SIDE.

CRIMINAL APPEAL NO. 250 OF 1998

The State of Maharashtra ..... Appellant

versus

Manulal Shankar Waghmare ..... Respondents

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Mrs. V.R. Bhonsale APP for the State.
Shri M.S. Karnik advocate for the respondent.

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CORAM: V.G. PALSHIKAR &
R.C. CHAVAN, JJ.

DATED : 15TH JULY, 2005

ORAL JUDGEMENT (Per Palshikar, J.) :

1. Being aggrieved by the judgment dated 19-7-1997 passed by the 3rd Additional Sessions Judge, Nashik in Sessions Case No. 70 of 1997 appellant has preferred this appeal on the ground mentioned in the memo of appeal as also canvassed before us.

2. With the assistance of the learned advocate appearing on behalf of the

appellant and the learned APP, we have srcutinised the entire record, and re-appreciated the evidence both oral and documentary as is raised on the record before the Additional Sessions Judge.

3. The prosecution case is that the accused Manulal and deceased Yeshwant belong to same village i.e. Patharsi, Taluka Suragana, District Nashik. On 16-12-1996 at about 2.00 p.m. When deceased Yeshwant was passing by the road in front of the house of accused Manulal, there was quarrel between the two and accused assaulted the victim Yeshwant by sickle causing injury. The prosecution then averred that after the victim Yeshwant fell down with injury, the accused Manulal lifted the victim and took him inside his house. People gathered and the accused allegedly told them that the victim was under the influence of liquor and there was scuffle between the two, in which the accused gave sickle blow to the victim , as a result of which the victim died. Accordingly a complaint was lodged with the police patil and on completion of investigation the accused was charge sheeted and prosecuted. The prosecution has examined as many as 9 witnesses to prove its case. The learned Judge on appreciation of evidence on record, came to the conclusion that the prosecution has failed to prove that the accused committed murder of the victim and therefore proceeded to acquit the accused. This order of acquittal is impugned in this appeal by the State.

4. P.w.1 Kisan is the village police patil of village Piluj pada , Pathardi and Parak pada . On 16-2-1996 he came to know from his cousin Ramchandra who was a sarpanch of the village that there was a quarrel in which accused assaulted Yeshwant the deceased.. The witness therefore went to the village and contacted th accused. The witness then says that accused told him that the injury to Yeshwant was caused by him, the accused. Next day he want to the police station and lodged complaint on the basis of which FIR was registered. He proved it as Exh. 13. Obviously this witness is not an eye witness . It is however alleged by the witness that the accused told him that the accused committed a mistake to hit the victim with sickle. However, the statement made by the accused to this witness cannot be used, as the witness was a police patil.

5. P.w.2 Meerabai is the resident of the same village and is staying adjecent to the accused. She narrates that around 12 noon on that day she heard commotion and went to see what the commotion is about and while do going, she saw accused assaulting the victim Yeshwant. She has deposed that she saw the accused taking the victim Yeshwant into his house. According to this witness P.w.2, she is an eye witness and saw , while going towards the house of accused , the accused assaulting the victim and the

incident occurred around 12 in the noon. She also claims to have seen the accused taking the victim into his house. This witness however candidly admitted in the cross examination that it is true that police patil Kisan and sarpanch Ramchandra told her to give evidence as per their say. This admission creates a serious doubt in the credibility of this witness.

6. P.w.3 Pandu has deposed that the incident occurred on 16-12-1996 at about 11.00 a.m. And when he went towards the house of the accused, he saw in the house of the accused, the dead body of Yeshwant the Victim. The accused, according to this witness told this witness that the assault was committed by the accused. He also speaks of scuffle being the result of intoxicated condition of the victim. This witness is therefore not an eye witness and he has alleged that the accused told him that the injury to the victim was caused by him.

7. P.w.4 Dr. Sunil is the doctor who conducted the post mortem on the dead body of the victim. He has deposed before the court how the injury was caused, what was the injury and how the death was homicidal. The deposition of this witness therefore proves that deceased Yeshwant met with homicidal death. The question is however as to who was the author of this injury and whether the prosecution has succeeded in proving that accused/appellant was

the person who inflicted that injury on the victim.

8. P.w.5 Ramchandra is the witness to the inquest panchanama. P.w.6 Bhaskar is the panch witness to the arrest of the accused. Exh.23 is the arrest panchanama which gives discription of the situation existing at that time. There is no mention in this panchanama that the accused had any blood stains on him. This witness is also points to Exh.24 which is panchanama of the seizure of clothes of the accused. In th4 seizure it is mentioned that there was no blood staines except on the back side of the underwear. It is pertinent to note that the allegation of the prosecution that the accused hit victim Yeshwant and carried the victim in his house. In such circumstances finding of blood stains on the clothes of the accused is natural.

9. P.w.7 Motiram is the witness to the seizure of the clothes of deceased Yeshwant. P.w.8 Madhukar is the constable who took the muddemal property to the Chemical Analyser's office in Aurangabad and P.w.9 is the investigating officer.

10. It will thus be seen that really there is no eye witness. There is a great varience in the deposition of these witnesses. According to P.w.1, the incident occurred at 2 O' clock in the afternoon. P.w.2 Meerabai who claims to be a

eye witness says that it took place at 12 O' clock. The third witness then says that it occurred at 11 O' clock and that he went into the house of the accused and found the victim lying dead in the house. There is therefore no certainty as to when the incident really occurred. Varience of three hours from 11.00 a.m. To 2.00 p.m. is not something which can be dismissed as minor discrepency. It is difficult in the circumstances to hold anyone of the witnesses as real eye witness to the assault. The entire case therefore clinches on the alleged admission of the crime by the accused before the witnesses. We have to weigh this admission against the conduct of the accused and in our opinion it is unnatural that a person would assault somebody to death and then take that somebody in his house. There is no reason in the circumstances for the accused to continue to stay in the house with the dead body for the people to come around and see him as to what had happened. In our opinion, the prosecution has failed to prove beyond reasonable doubt that the accused was the person who committed the act.

11. The learned trial Judge has also appreciated these aspects and has very succinctly put it in para 14, 15 and 17 of the judgment, discussing these aspects of the evidence on which the learned Judge had come to the conclusion of holding the accused not guilty of murder. We are in agreement with the finding recorded by the learned trial Judge. His findings are correct,

they are based on valid appreciation of evidence on record. We have also come to the same conclusion by our reappreciation of evidence. In the circumstances, in our opinion, there is no substance in this appeal and the same deserves to be dismissed. It is accordingly dismissed.